STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 26, 2011
v	No. 296333 Kent Circuit Court
STEVEN LAMAR CHEVIS, Defendant-Appellant.	LC No. 09-003554-FH; 09-004436-FH

Before: FORT HOOD, P.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of marijuana, MCL 333.7403(2)(d). Defendant was sentenced to time served for both convictions. He appeals as of right. We affirm.

On March 12, 2009, Officers Mollan and Wuis were informed by their shift sergeant that there had been complaints about marijuana dealing near 452 Adams. The officers were asked to drive through that area periodically during their shift. They drove by the area around midnight and saw a van parked in a driveway behind a house. The occupants of the vehicle turned the dome light on, but turned the light off as the police vehicle approached. The officers pulled their car into the driveway behind and somewhat to the side of the van. The officers turned on the spotlight from their car to see what was happening in the van. The officers made contact with the occupants of the van to ask them if they knew anything about the complaints concerning drug activity in the area.

Officer Mollan saw a marijuana blunt in an ashtray on the center console of the van. Defendant, the driver of the van, was then asked to step out of the van. A search of defendant's person revealed sixteen baggies of marijuana. The officers later learned that the van was not parked at 452 Adams, but at 442 Adams.

A similar incident occurred on April 10, 2009, when Officer Wuis was patrolling the area in a police cruiser by himself. This incident occurred at 4:00 a.m. and involved a van in the same location as the one on March 12. Officer Wuis did not know it was the same van until he saw the inside and ran the plates sometime later. Officer Wuis was driving in the area because of recent drug activity and saw two people in the van. He pulled in behind the van. At that time, the two occupants of the van were starting to exit the vehicle. Officer Wuis asked them to get back into the vehicle. While Officer Wuis testified that the contact with them could have been done

outside the van, he asked them to get back in for safety reasons. Defendant was once again on the driver's side of the van when Officer Wuis asked if he could do a search of his person. Defendant consented to that search, and Officer Wuis found four individually wrapped baggies of marijuana.

Defendant filed a pre-trial motion to suppress the evidence found during both searches, alleging that the police officers committed an improper seizure when they parked their vehicle behind his van on both occasions. The trial court denied that motion, finding there was no seizure.

A trial court's ultimate decision on a motion to suppress evidence is reviewed de novo. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). A trial court's findings of fact related to that motion, however, are reviewed for clear error. *Id.*

The right against unreasonable searches and seizures is guaranteed by both the United States and the Michigan Constitutions. *People v Corr*, 287 Mich App 499, 506; 788 NW2d 860 (2010). Those constitutional protections apply with respect to police/citizen contact only after the citizen has been seized. *People v Bolduc*, 263 Mich App 430, 438; 688 NW2d 316 (2004). "Generally stated, the test for what constitutes a seizure is whether, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Id*. (internal citations omitted). Some circumstances that might indicate a seizure include the threatening presence of several officers, a weapon displayed by an officer, physical touching of the citizen, or the use of language or tone of voice that indicate compliance might be compelled. *People v Sasson*, 178 Mich App 257, 261; 443 NW2d 394 (1989). There is no Fourth Amendment protection for what a person knowingly exposes to the public regardless of whether the exposed object is examined or illuminated by artificial means. *People v Hulsey*, 176 Mich App 566, 569; 440 NW2d 59 (1989).

When "an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there has been no restraint on the person's liberty and the person is not seized." *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998). The fact that the questioning occurs on a private driveway does not alter this holding. Entry onto a driveway does not constitute a "search" for constitutional purposes because it does not interfere with a legitimate expectation of privacy. *Id*. at 693-694.

> Merely entering the private property of another is not an offense unless one has been forbidden to do so or refuses to depart after having been told to do so by a proper person. More importantly, it is commonplace for solicitors, drivers of motor vehicles wanting to reverse direction, and other individuals to enter the unsecured driveways of private homes. Accordingly, defendant had no reasonable expectation of privacy against a police officer merely entering the driveway to ask him questions. [*Id*. at 694 (citations omitted).]

In the present case, defendant contends that an unlawful seizure occurred on both occasions because the police officers parked their police cruiser behind defendant's van, an act that prevented the van from leaving. However, the officers testified there was ample room for the van to get around the police vehicle. The occupants of the van also could have gone into the

house as a method of leaving. Therefore, because walking and driving away were both options for the occupants of the van, there was no seizure by the police. In regard to the April 10 stop, although the police officer asked defendant and his companion to get back into the vehicle for officer safety purposes, he also said the contact could have been conducted in front or behind the van as well. There was no evidence that defendant was told otherwise. In any event, directing defendant to sit in the van until some questions were asked did not amount to a seizure of his person. *Shankle*, 227 Mich App at 694.

According to the testimony of the officers, these were stops to make citizen contact and inquire or follow-up on the complaints about marijuana dealing in the area. The officers also testified that the occupants of the van were free to leave until they saw the marijuana blunt in the van on March 12 and until defendant's consent to a personal search revealed four baggies of marijuana on April 10. There was no indication that the police officers had their weapons drawn in a threatening manner at any time. The fact that the officers were in uniform and were armed was not enough to rise to the level of a seizure.

Because there was no seizure, *Shankle*, 227 Mich App at 694, the trial court correctly denied defendant's motion to suppress the evidence. *Williams*, 472 Mich at 313.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Michael J. Talbot
/s/ Christopher M. Murray